IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/09/2003

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THE HONOURABLE MR. JUSTICE A.K.RAJAN

W.P.NO.17504 OF 2000

M/s Universal Print Systems Ltd.,
rep. by its Director Mr. P.S.Vasu
9 Monteith lane, Egmore
Chennai 8 ..Petitioner

-Vs-

1.G.Kuppusamy
Director (Transmission Planning)
Chennai Telephones
7, Kushkumar Road
Chennai 34

2.Deputy General Manager (Central)
Chennai Telephones
146, Greams Road
Chennai 6

3.Sub-Divisional Engineer
Legal Cell (Central)
Chennai Telephones
146, Greams Road,
Chennai 6 ..Respondents

Petition filed under Article 226 of the Constitution of India for the issue of writ of Certiorarified Mandamus as stated therein.

For petitioner :Mr.R.Krishnaswami, S.C.
for K.Harishankar

For respondents: Mr.R.Madhanagopal Rao, SCGSC`

:ORDER

The petitioner has filed the writ petition seeking for issuance of a writ of Certiorarified Mandamus calling for the records of the 1st respondent

in his proceedings Dir.TX II/ARB/8554282/2000-2001 dated 2 2.9.2000 and quash the same.

2.The petitioner is a telephone subscriber. The dispute arose between the petitioner and the telephone Department and that dispute has been referred to the arbitrator as per Section 7 B of the Indian Telegraphic Act. While the first respondent was appointed as the arbitrator. It is stated in the affidavit interalia that on the oral hearing on 22.9.2000, the telegraph authority was represented by the third respondent who is the Sub-Divisional Engineer(Legal Cell (Central). While hearing was held in the Chamber of the 1st respondent, apart from the 1st respondent/arbitrator, the petitioner's counsel and the 3rd respondent, another person who stated that he was also a Sub-Divisional Engineer of Chennai Telephones and working in the office of the 1st respondent was also present. When the petitioner's counsel was advancing his arguments on the point of jurisdiction, the said Sub-Divisional Engineer working in the office of the 1st respondent arbitrator intervened and began to state that such jurisdiction questions cannot be raised and the 1st respondent had the authority to entertain the dispute. The petitioner's counsel represented to the 1st respondent/arbitrator that such an intervention by a person neither authorised to represent the Telegraph Authority nor party to the dispute should not be permitted. The 1st respondent then stated that the said person is only an Officer employed in his Office and his intervention may be ignored and further assured that in future such intervention would not be made by the said person. Despite this, the 1st respondent/Arbitrator did not do anything to control the said person's further intervention during the course of the arguments by the petitioner's counsel and the 3 rd respondent. The said Sub-Divisional Engineer, in the office of the 1st respondent/Arbitrator continued to intervene and exercise his authority and influence over the 1st respondent arbitrator.

The counsel for the petitioner relying upon this averment in the affidavit submitted that the arbitrator has no control over the proceedings of the Arbitration Act and therefore, it is bias against the petitioner. The petitioner's prayer is that they are ready to go on with the arbitration proceedings, if the arbitrator is changed. They have no objection for appointing any other person from the department as arbitrator.

3.No counter has been filed by the first respondent. The third respondent has filed counter denying the averments made by the petitioner.

4.In the absence of any specific rebuttal by the person who ought to deny the allegations made against him, the Court has to take that the averment is true and correct.

5.The learned counsel for the respondents submits that under Section 7 B of the Indian Telegraphic Act the arbitrator once appointed cannot be changed except by the order of the Court or unless the arbitrator voluntarily resigns. The learned counsel for the respondents stated that the arbitrator has been transferred to a far off place and he is not working at Chennai.

6.Taking into account the fact that the first respondent has been transferred to a far off place from Chennai and he is not working at Chennai presently and the averments made in the affidavit is held to be proved, it is proved that the arbitrator has no control over his own proceedings. (He permitted another person to interfere in his proceedings.) Such an action is not proper and it will not strengthen the legality of the arbitration proceedings.

7.In spite of the fact that arbitration proceedings are similar to the Court proceedings, though the procedure under C.P.C. are not followed or cannot be strictly followed, yet, the arbitrator shall act in such a manner, that he should not give any room to create an impression that he has no control over the proceedings or that he is influenced by the others. If an arbitrator conducts the proceedings in such a manner that it creates a genuine doubt in the minds of the parties that he permits interference from others or that he is suseptible for being influenced in the decision making process, it is just and necessary to change the arbitrator in the interest of justice. It cannot be lost site of, that an arbitral award is not appealable and is final. The Courts also cannot interfere under Section 34 of the Arbitration Act except to a limited extent.

8.The learned counsel for the petitioner also relied upon the decision in S.KANYALAL V. UNION OF INDIA AND OTHERS reported in AIR 1990 ANDHRA PRADESH 1.

9.Hence, the first respondent arbitrator shall be replaced by any other arbitrator of the department. Appropriate order shall be passed by the department within two weeks from the date of receipt of the copy of the order.

10.The writ petition is allowed accordingly. No costs.

Index: Yes
Internet:Yes

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To

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